DOCUMENT RESUME

ED 479 896 FL 027 784

AUTHOR	Dunbar, Robert
TITLE	The Ratification by the United Kingdom of the European Charter for Regional or Minority Languages. Mercator Working Papers.
SPONS AGENCY	European Union, Brussels (Belgium).
REPORT NO	WP-10
ISSN	ISSN-1133-3928
PUB DATE	2003-00-00
NOTE	51p.; Prepared by CIEMEN (Escarre International Centre for Ethnic Minorities and Nations), Barcelona, Spain.
AVAILABLE FROM	CIEMEN, Rocafort 242, bis, 08020 Barcelona, (Catalunya), Spain. Tel: 34-93-444-38-00; Fax: 34-93-444-38-09; e-mail: mercator@ciemen.org; Web site: http://www.ciemen.org/mercator.
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	EDRS Price MF01/PC03 Plus Postage.
DESCRIPTORS	Foreign Countries; Immigrants; Irish; Language Maintenance; *Language Minorities; *Language Usage; *Official Languages; Scots Gaelic; Uncommonly Taught Languages ; Welsh
IDENTIFIERS	Language Policy; *United Kingdom

ABSTRACT

This paper describes the impact of the ratification of the European Charter for Regional or Minority Languages in the United Kingdom, examining the history and current demographic and social position of the various languages to which the Charter applies. The first section, "Linguistic Minorities in the United Kingdom: Historical Development and Present Demographic Position," describes the history and notes that the languages of migrants are not covered by the Charter. The second section, "Existing Measures of Support for Linguistic Minorities in the United Kingdom," focuses on Welsh, Scottish Gaelic, Irish, Scots, Ulster-Scots, and Cornish. The third section discusses "Application of the Charter to British Regional or Minority Languages." The final section, "Conclusions," suggests that the United Kingdom's ratification of the Charter may create a very useful dynamic and significant step forward for regional or minority language communities. (SM)

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Robert Dunbar

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Publisher

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ISSN 1133-3928

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Acknowledgements:
Domhnall Martáinn (Comunn na Gàidhlig & Scottish subcommittee of EBLUL's UK state committee)
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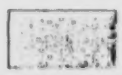

[The ratification by the United Kingdom of the European Charter for Regional or Minority Languages

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0. Introduction

The United Kingdom signed the *European Charter for Regional or Minority Languages* (the "Charter")[1] on 2 March, 2000 and ratified it 27 March, 2001, with the result that the Charter came into force for the UK on 1 July, 2001.[2] On 1 July, 2002, the UK submitted its initial periodic report under the Charter, and the Committee of Experts are conducting their on-site visit to the UK in January, 2003.[3]

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[1] Strasbourg: Council of Europe. Publishing and Documentation Service, 1993.
[2] The Charter was adopted on 5 November, 1992 and entered into force on 1 March, 1998. Under Article 19, paragraph 2 of the Charter, it enters into force for a State on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification. To date, 17 States have ratified the Charter, and a further 12 have signed it.
[3] The only enforcement mechanism under the Charter is a system of State reporting. Under Article 15, paragraph 1, each State which has ratified the Charter must make an initial report within a year of the Charter's entry into force, and subsequent reports every three years

The ongoing impact of the Charter on British linguistic minorities and on the policies of governments and public bodies in the UK with respect to such minorities deserves close attention, for a number of reasons. First, the predominant language in the UK is English, one of the world's most widely spoken languages, and the one that has emerged as the global *lingua franca*. Second, the UK has one of Europe's more centralised systems of government. Unlike most European States, the UK has no written constitution, and arguably has no *de jure* official language, although English is and has for several centuries served as the *de facto* official language, since it is the language through which the conduct of public affairs takes place. Until 1999, there was effectively only one level of government in the UK[4], and the UK Parliament at Westminster had absolute legislative authority with respect to all matters, including all aspects of public policy that could impact on Britain's minority linguistic communities.[5] As we shall see, the Scottish, Welsh and Northern Irish devolution of 1999 changed this picture to some extent, but the power of the English-speaking south-east and London-based political, economic, cultural and social institutions remains profound. Third, the linguistic minorities to which the Charter applies are, with the exception of Welsh, generally amongst the more threatened or institutionally marginalised of Europe's linguistic minorities. The languages to which Part III of the Charter applies are all members of the Celtic family of Indo-European languages, and this family is itself one of Europe's most threatened. Fourth, the linguistic minorities to which the Charter applies are only part of a wider linguistic mosaic. Like many other European States, the UK has experienced large-scale immigration, particularly since the Second World War. Many of these immigrants have come from Britain's former colonies. The result is that there are now fairly well-established minority communities in many British cities, adding considerably to Britain's ethnic, linguistic and religious diversity. State policies in respect of the autochthonous linguistic communities to which the Charter applies are now only a small part of a broader

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thereafter. The reports are presented to the Secretary General of the Council of Europe and are examined by a Committee of Experts. The Committee of Experts then prepare a report for the Committee of Ministers of the Council of Europe which shall include proposals for recommendations to the State: Article 16.

[4] Devolved government existed for Northern Ireland from 1921 to 1972: see below.

[5] The UK had, and still has, a system of local government, but these governments derive their power from Westminster. With devolution, matters relating to local government in Scotland, Wales and Northern Ireland now fall within the competence of the devolved governments of those jurisdictions.

set of considerations with respect to minorities policy in general, and it is not yet clear how these various policy strands will interact.

In this paper, the impact of the Charter on the linguistic minorities to which it applies will be critically assessed. The paper will begin by considering briefly the history and current demographic and social position of the various languages to which the Charter applies. Existing UK policies and measures of support will then be explored, set in the context of devolution of powers to Scotland, Wales and Northern Ireland which took place in 1999. Against this backdrop, British ratification of the Charter will then be examined. The analysis will show that the process and fact of ratification have thusfar had a relatively limited impact on the languages covered by the Charter. It will be argued, however, that the Charter may yet have important implications, particularly for those languages which, unlike Welsh, have not yet benefited from much State support or any clearly articulated government policy. Indeed, it will be argued that, in spite of the limitations of the system of State reporting created under the Charter, the process of scrutiny can have benefits, in both giving a new forum for non-governmental organisations involved in the development of such languages to make their views known, and also in forcing governments to treat minority language policy as a serious public policy issue.

1. Linguistic Minorities in the United Kingdom: Historical Development and Present Demographic Position

The current global dominance of English obscures the relatively complex linguistic history of the British Isles. English descends from the various tongues brought to the British Isles by Germanic tribes such as the Angles and Saxons, who from about the middle of the fifth century A.D. began arriving in England from the mainland of what is now modern Friesland, the Frisian Islands and the coastal areas of Saxony in north-west Germany.[6] The British Isles were at that time populated largely by various tribes who spoke mainly Celtic languages, which belonged to two branches: the p-Celtic, or Brythonic languages, from which

[6] See, for example, Glanville Price, "English", in Glanville Price, ed., *Languages in Britain and Ireland*, (Oxford: Blackwell, 2000), p. 141, at p. 141-142.

modern Welsh, Breton and Cornish descend; and the q-Celtic, or Goidelic languages, from which modern Scottish Gaelic, Irish and Manx descend. The Germanic languages pushed back the Celtic languages, with the result that by the end of the first millenium, p-Celtic languages were spoken only in Wales, in Cornwall, and probably to some extent in south-western Scotland and north-western England, and a q-Celtic language, the forerunner of modern Scottish Gaelic, was spoken throughout most of what is now Scotland. Ireland was virtually untouched by these Germanic incursions, although it did suffer invasion and settlement by Vikings, as did the northern and western coasts and islands of Scotland, and much of the eastern coast of England.

In the second millenium, the various Celtic languages have all experienced a steady erosion, though at differing paces and under somewhat differing influences, not least of which being the influence of the English, then the British State. Indeed, political and economic integration into a wider British polity has generally worked to the significant disadvantage of all languages in the British Isles except for variants of standard English. In Wales, the process of political integration began in earnest in the late thirteenth century. Prior to then, Wales was a collection of small kingdoms, and while the Kings of England had traditionally claimed an overlordship, and after the Norman conquest had established a military presence, they had done little to exercise military or administrative control.[7] In 1282-3, however, King Edward I of England conquered Wales, and under the Statute of Wales of 1284, divided Wales into shires on the English model and introduced English common law.[8] In spite of these incursions, Welsh remained the dominant language throughout Wales, although the use of English in the legal system and for administrative purposes meant that the Welsh nobility had to develop fluency in that language.[9] It was under Henry VIII, however, that more significant steps were taken to integrate Wales, and these were to have consequences for the Welsh language. In 1536, the Act of Union formally incorporated the Principality of Wales into England, and provided that English would be the language of the courts in Wales and that only those able to speak English could hold public office. This Act, together with another in 1542, generally

[7] Kenneth O. Morgan, ed., *The Oxford History of Britain*, (Oxford: Oxford University Press, 1988), at p. 155.
[8] *Ibid.*
[9] Janet Davies, "Welsh", in Glanville Price, ed., *Languages in Britain and Ireland*, *supra*, p.

aimed at creating a uniform legal and administrative system throughout England and Wales. Forced to learn English, the Welsh aristocracy became increasingly anglicised, and slowly ceased to be patrons of Welsh-speaking society.[10] Increasingly, Welsh became a language restricted to the rural peasantry, artisans and lower clergy[11]; in spite of this, it remained the predominant language throughout most parts of Wales.

In the nineteenth and twentieth centuries, however, the linguistic situation in Wales changed considerably. Throughout the nineteenth century, absolute numbers of Welsh speakers appear to have risen; while census data was not available until 1891, it is estimated that there were about 470,000 Welsh speakers in 1801, and that this figure had risen to about 800,000 by 1851. However, the population of Wales as a whole rose even more sharply, largely due in-migration of non-Welsh speakers in response to the development of coal mining and heavy industry in south Wales. Thus, the percentage of Welsh speakers in the total population of Wales fell from perhaps 80% to perhaps 67% over this period.[12] While significant numbers of Welsh-speakers also gravitated to the industrial south, they tended over time to assimilate. Language shift away from Welsh was further encouraged by the *Education Act 1870*, which introduced public education, delivered solely through the medium of English, by the *Local Government Act 1889*, which made English the sole language of the newly-formed local authorities, and by the increasing intrusion of English-dominated media into Welsh life.[13] By the time of the first British census of 1891, 910,289 respondents, or 54.4% of the Welsh population, reported themselves as Welsh-speaking; of those, 508,036 were reported as monoglots.[14] By 1901, 929,824 respondents, or 50.4% of the population, were Welsh speakers; the number of monoglots had, however, fallen sharply, to 280,905. In the 1911 census, absolute numbers of Welsh speakers

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78 at 79.

[10] *Ibid*, at 80. See, generally, Janet Davies, *The Welsh Language*, (Cardiff: University of Wales Press, 1993).

[11] Davies, *The Welsh Language*, *supra*, at 23. The status of the Welsh language was assisted by one piece of legislation: an Act of Parliament in 1563 required the translation of the Bible and the Book of Common Prayer into Welsh, ensuring that Welsh tended to become the language of religious worship in Wales.

[12] Janet Davies, "Welsh", *supra*, at 83.

[13] Robert Owen Jones, "The Welsh Language: Does it Have a Future?", in Ronald Black, William Gillies and Roibeard Ó Maolalaigh, eds., *Celtic Connections: proceedings of the tenth international congress of celtic studies, Vol. I*, (East Linton: Tuckwell, 1999) 425 at 429, and Price, *supra*, at 491.

[14] Janet Davies, "Welsh", *supra*, at 89.

continued to rise, to 977,400, but they were only 43.5% of the total Welsh population, and the number of monoglots continued to fall, to 190,300. From 1911 onwards, both absolute numbers and percentages of Welsh speakers fell.[15]

There are, however, signs that this process is now being arrested, and Welsh enters the twenty-first century as unquestionably the strongest of Britain's autochthonous languages. The 1991 UK census revealed that the percentage of the roughly 2.7 million inhabitants of Wales who spoke Welsh was 18.7%, down slightly from the figure of 18.9% in the 1981 census; however, the number of persons able to speak Welsh, as revealed in the 1991 census – 510,920– had increased slightly since 1981, when 508,207 persons were reported.[16] In terms of linguistic survival, however, the 1991 Census gives reason for optimism about the future of the language, because the numbers and percentages of young people who speak the language are up.[17] The preliminary results of the 2001 census, released on 13 February, seem to confirm these trends. They showed increases in both absolute numbers of Welsh speakers and in percentages. In particular, 575,640 people aged three and older identified themselves as being able to speak Welsh, constituting 20.52% of the Welsh population in that age group. A further 222,077 people identified themselves as having at least some skill or combination of skills in Welsh, other than the ability to speak (e.g. comprehension of spoken Welsh, or the ability to read, or write, or read and write but not speak Welsh, etc.).[18] These most recent census figures also seem to confirm that, although the language continues to be under some strain in its traditional heartland in the rural north-west, it has shown a marked expansion in certain urban centres, most notably in the region of the Welsh capital, Cardiff, and among the professional middle classes.[19] While the future of Welsh is far from

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[15] Colin Williams, "Welsh in Great Britain", in Guus Extra and Durk Gorter, eds., *The other languages of Europe*, (Clevedon: Multilingual Matters, 2001), p. 59 at 59-60.

[16] Janet Davies, *The Welsh Language*, *supra*. The vast majority of Welsh-speakers also speak English. While the Census does not record levels of linguistic competence, a Welsh Office survey, *Arolwg Cymdeithasol Cymru 1992: adroddiad ar y Gymraeg*, (March, 1995) estimated that about 326,600 spoke Welsh as a first language, on a slightly higher estimate of the numbers of Welsh speakers, 590,800 than recorded in the 1991 Census.

[17] See Kenneth MacKinnon, "Celtic Language Groups: Identity and Demography in Cross-Cultural Comparison", in Black, Gillies and Ó Maolalaigh, *supra*, 324 at 325.

[18] Office of National Statistics, available at: http://www.statistics.gov.uk/census2001/profiles/rank/walskills.asp.

[19] See, for example, Davies, *The Welsh Language*, *supra*, at 72. See also, MacKinnon, *supra*.

secure,[20] there is good reason for guarded optimism about its future, and it is clearly the strongest and most secure of all of the UK's autochthonous languages. As we shall see, part of the reason for this is due to government policy; but a considerable amount of the credit must also be given to Welsh speakers themselves, who have generally shown a greater willingness to engage in serious and sustained political activism on behalf of their language than speakers of Britain's other autochthonous minority languages.[21]

At the other end of the spectrum, in terms of demographics and measures of state support, is the only other Brythonic language still spoken in the UK, Cornish. Cornwall was also politically and administratively integrated into England at an early stage, and the Cornish language was subjected to many of the same pressures as Welsh. With the arrival of the Protestant Reformation in the sixteenth century, links with Brittany and Breton –the language with which Cornish is most closely related– were effectively broken, further weakening Cornish.[22] It is estimated that perhaps 22,000 people spoke Cornish in 1600, but the language suffered a steady decline; although it has famously been claimed that Dolly Pentreath, who died in 1777, was the last native speaker of Cornish, it appears that the last person with a traditional knowledge of Cornish was believed to have died in about 1890.[23] In the late nineteenth century, however, efforts began to be made to revive Cornish as a spoken language, and a Cornish language movement persists to the present. This movement has never been a mass movement, and its central core of support has never exceeded 100.[24] A small number of people use Cornish daily, although a much greater number, estimated in 1981 at around 1,000, have at some point attended Cornish language classes.[25] The movement has, however,

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[20] For a good review of the present demographic position of Welsh and of the key demographic issues facing the language, see Colin Williams, "Welsh in Great Britain", *supra*.

[21] See Janet Davies, *The Welsh Language*, *supra*, generally, and in particular, Dylan Phillips, "The Dragon Roars: The emergence of civil disobedience in Welsh language politics", paper given on 19 March, 2000, at the University of California Celtic Studies Conference, available at: http://www.humnet.ucla.edu/humnet/celtic/22papers/phillips.pdf.

[22] See Philip Payton, "Cornish", in Glanville Price, ed., *Languages in Britain and Ireland*, *supra*, p. 109 at 109-113.

[23] See Philip Payton, "The Ideology of Language Revival in Modern Cornwall", in R. Black, W. Gillies and R. Ó Maolalaigh, eds., *Celtic connections: proceedings of the tenth international congress of celtic studies*, (Tuckwell: East Linton, 1999), 395 at 412, 419, and *The Cornish and the Council of Europe Framework Convention for the Protection of National Minorities*, http://www.biscoe.org.uk/cnmr.htm, at para. 5.1.

[24] Payton, *ibid*, at 397.

[25] *The Cornish*, *supra*, at para. 5.3. The present population of Cornwall is estimated to be

often been riven by both practical and ideological disagreements about the form the revival should take.[26] It is estimated that there are now about 200 competent Cornish speakers, and the recognition of Cornish by the UK Committee of the European Bureau for Lesser Used Languages has given the movement its first real institutional recognition and, crucially, seems to have brought the various revivalist groups closer together.[27]

Compared to Wales, Cornwall and, as we shall see below, Ireland, Scotland maintained its autonomy from England for a considerably longer period. Scottish independence from England effectively ended only in 1707, with the Treaty of Union, under which the two kingdoms of England and Scotland were united into one kingdom under the name of Great Britain, and the Scottish and English parliaments also became one. The process of union had started a century earlier, when in 1603 King James VI of Scotland was invited to take the English throne and became James I of England. The erosion of the Gaelic language, however, began many centuries before. The language from which modern Gaelic descends came to Scotland with settlers from the north-east of Ireland, who began arriving at least as early as the fifth century A.D.[28] The language expanded steadily throughout the first millenium, and by the eleventh century was the language of the Scottish court and most of the country. In the eleventh century, however, Gaelic was displaced in the Scottish court, and has suffered a more or less unbroken decline ever since –unlike Welsh, one which has not yet been interrupted. By the fourteenth century, Gaelic was restricted mainly to the Scottish Highlands and the islands of the west coast, and from the fifteenth century, the Scottish, then British crown sought to fully integrate this region more effectively, and saw the anglicisation of the Highlands as a means of doing so. Like Welsh, Gaelic has also suffered from adverse government policies, most notably the *Education Act 1872*, which introduced universal English-medium public education.[29] While Gaelic has started to receive some government support and has seen a greater amount of political activism than in the past, much of this has only occurred over the last

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about 490,000.

[26] See Payton, "The Ideology of Language Revival in Modern Cornwall", *supra*.

[27] See Payton, "Cornish", *supra*, at 118.

[28] See Payton, "The Ideology of Language Revival in Modern Cornwall", at 417.

[29] See, generally, Kenneth MacKinnon, *Gaelic: A Past and Future Prospect*, (Edinburgh: Saltire Society, 1991), part I; see, also Charles W. J. Withers, *Gaelic in Scotland, 1698-1981*, (Edinburgh: John Donald, 1984), and Charles W. J. Withers, *Gaelic Scotland: The Transformation of a Culture Region*, (London: Routledge, 1988).

twenty years; the fact remains that Gaelic is in a much more tenuous position than Welsh in virtually every respect.

With regard to the demographic situation, the 1991 UK census indicated that there were 69,510 people in Scotland, or about 1.4% of the Scottish population of about 5 million, who could speak, read or write Gaelic,[30] a drop of about 13,000 from the 1981 census. All Gaelic speakers are bilingual. A comparison with the census figures from 1891 shows the extent of the decline: there were then 254,415 Gaelic speakers, who represented 6.3% of the population, and a significant number of monoglots. A closer analysis of the 1991 census returns provide stark evidence of a language community on the brink of terminal decline. Over half of all Gaelic speakers are aged 45 or more, and Gaeldom's leading demographer notes that the numbers of young Gaelic speakers are "quite insufficient to reverse the inexorable downward trend of Gaelic speakers across the age-spectrum".[31] Comunn na Gaidhlig ("CNAG"), the main Gaelic-language development agency, estimated in 1999 that there were only about 54,000 in Scotland, a figure which implies a net loss of well over 1,000 Gaelic speakers per year.[32] As with Welsh, the preliminary results of the 2001 census for Gaelic were released on 13 February, 2003, and as was expected, they show a continued decline, though not as sharp a decline as had been predicted. In the 2001 census, 58,652 people aged three and over reported themselves as being able to speak Gaelic, or about 1.2% of the Scottish population in that age group, a 7,426 person and a 0.2% decline from 1991. A slightly higher figure of 65,674 persons (1.3% of the Scottish population aged three and over) were reported as being able to speak, read or write Gaelic, also down slightly from 1991. In 2001, a question with respect to the ability to understand Gaelic was asked for the first time, and a further 26,722 persons indicated this competence, with the result that 92,396 persons, or 1.9% of the Scottish population, indicated that they had at least some competence in the

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[30] The Scottish Parliament Information Centre, *Gaelic (Gàidhlig)*, Devolution Series 2/00, 2 March, 2000. While the census did not solicit information on linguistic competence, the great majority of those reported as Gaelic speakers were almost certainly native speakers, and fully bilingual.

[31] Kenneth MacKinnon, "Neighbours in Persistence: Prospects for Gaelic Maintenance in a Globalising English World", *Aithne na nGael/Gaelic Identities*, (Belfast: Institute of Irish Studies, Iontaobhas Ultach/Ultach Trust, 2000), at 144.

[32] Comunn na Gaidhlig, *Gaidhlig plc: Plana Leasachaidh Cànain/A development plan for gaelic*, (CNAG: 1999), at 43.

language.[33] Two additional points should be made. First, the rate of decline between 1991 and 2001, though significant, was not as great as had been anticipated, and was only about half of that which occurred between 1981 and 1991, where the number of Gaelic speakers dropped by about 13,000. This period 1991-2001 roughly corresponds to the period during which support for Gaelic-medium education and broadcasting increased, and therefore may suggest that such expenditure, though insufficient, may be having some effect in slowing the decline. A second point that should also be noted is the considerable weakening of the Gaelic-speaking population in the traditional "heartlands" of the Highlands and Islands.

The other language in Scotland to which, as we shall see, the Charter applies is Scots. Like English, Scots descends from the Germanic languages brought to Britain starting in the fifth century, and which arrived in Scotland in the seventh century with Anglian peoples coming north from Northumberland. Influenced by Anglo-Danish, Norman French, Dutch and to a limited extent Gaelic, it had become the tongue of urban centres and much of the lowlands by the middle ages; by the mid-fifteenth century, it had replaced Latin as the language of the Scottish court and of public administration[34] and had also become the principal literary language of the country. In the early seventeenth century, the Protestant King James VI and I sought to break the power of the Catholic and Gaelic speaking earls of the north of Ireland, and to break the unity of the Gaelic cultural zone which stretched from Cork in the south of Ireland to Lewis in the Scottish Hebrides, and pursued a policy of settling Scottish and English Protestants in the north of Ireland; those Scots coming from Lowland areas brought their language with them, and this speech has been preserved to the present as Ulster Scots. From the mid-sixteenth century, however, Scots has been subject to a gradual process of anglicisation, due to a number of factors: the Reformation increased political and social ties between Scotland and England; and, the ascension of James VI of Scotland to the English throne in 1603 and the subsequent Union of the two Crowns and of the Scottish and English Parliaments

[33] *Scotland's Census 2001: The Registrar General's Report to the Scottish Parliament*, 13 February, 2003; available at: http://www.gro-scotland.gov.uk/grosweb/grosweb.nsf/file5/$file/rg_report_parliament.pdf.

[34] As noted above, Gaelic had been displaced from the court and public administration in the eleventh century.

in 1707 led to the displacement of Scots by English as the language of public administration and, increasingly, of "polite" society.[35]

In spite of these anglicising forces, Scots continues to survive, both in Scotland and in Northern Ireland, not least as a language of a still-vibrant literary and musical tradition.[36] While it is true that there are elements of Scots in the speech of the overwhelming majority of the population of Scotland and, arguably, Northern Ireland, the actual position of the Scots tongue is less clear. It has been noted that the language of contemporary lowland Scotland is fluid,

> ". . . marked by a wide and almost infinitely variable range of speech-styles, ranging from the full Scots of some fisher-folk and farming people in the North-East, through various intermediate 'mixtures of Scots and English', to a variety of Standard English spoken in a Scottish accent.[37]"

It is, therefore, difficult to quantify a precise number of speakers of Scots; for example, in spite of lobbying by Scots language activists and the Scottish National Party (the "SNP"), the Scottish Executive refused to include a question on Scots on the 2001 census. The Ulster Scots Language Society has estimated the number of speakers of Ulster Scots, sometimes referred to as 'Ullans', at 100,000,[38] although, once again, no census data exists. Part of the difficulty in determining the demographic position and usage patterns of Scots is its similarity to English. Nonetheless, Scots activists have advanced a number of reasons for regarding Scots as a language distinct from modern English: the Scots tongue has many attributes not shared by any regional English dialect, and these linguistic characteristics differ more sharply from Standard English than any English dialect; Scots has a distinct literature, and there is no English dialect which can compare with it in its antiquity, extent, variety and distinction; and, it is arguably

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[35] See, generally, *Scotland: a linguistic double helix*, European Languages 2, (The European Bureau for Lesser Used Languages: Dublin, 1995), at 29-31, Jeremy J. Smith, "Scots", in Glanville Price, ed., *Languages in Britain and Ireland*, *supra*, and *The Concise Scots Dictionary*, Mairi Robinson, ed., (Aberdeen University Press: Aberdeen, 1985), at ix-xii.
[36] *Scotland: a linguistic double helix*, and Mairi Robinson, ed., both, *ibid*, at 32-36, and xii-xiii, respectively. See also, J. Derrick McClure, *Why Scots Matters*, (The Saltire Society: Edinburgh, 1997).
[37] Mairi Robinson, *supra*, at xii.
[38] *Ullans*, Vol. 2, 1994, at 56.

at least as distinct from standard English as, say, Catalan is from Castilian Spanish, or Danish is from Norwegian.[39] However, the language faces a number of significant challenges: the similarity to English, the relative lack of political activism amongst the supporters of the language (at least until very recently) and their relative inability to articulate a plan and vision for the revival and promotion of the language, and the almost total lack of state support for it.

The last of the autochthonous languages to which the Charter applies is Irish. Like the other Celtic languages, Irish has suffered a steady decline in numbers and percentages of speakers over a long period. As in Wales, Ireland was nominally subject to English control from a fairly early period. Between 1169 and 1172, Henry II of England exercised a lordship over Ireland, and this was accompanied by the construction of castles and the settlement of Norman-French aristocratic families. Many of these fairly quickly assimilated into Irish Gaelic culture, and effective English administrative and political control did not extend much beyond the "pale", around Dublin on the east coast. In August, 1535, Henry VIII of England defeated a rebellion of the Irish lords, imposed direct rule, and changed his title from that of "Lord" to "King" of Ireland. As in Wales, the local language, Irish, remained predominant throughout most of the country. However, beginning with Henry VIII, the English Crown actively sought to impose English rule on Ireland and, in the process, to destroy its cultural distinctiveness.[40] With the defeat of the Earls of Ulster at the beginning of the seventeenth century, the old Gaelic political and social order was brought to an end; as noted, James VI and I sought to break the unity of the Gaelic world permanently by beginning a policy of planting Protestant Scots and English in the north of Ireland.[41] While the Irish language hung on amongst the rural peasantry, famine and emigration, as well as other social forces, took a devastating toll on the language in the nineteenth century. By the twentieth century, communities in which Irish continued to be the community language were limited mostly to the extreme west coast, primarily in Galway and Mayo, Cork and Clare, and Donegal, all in the Republic of Ireland, which gained independence from the UK in 1922. Irish had all but died out as the native tongue of people in what is now Northern Ireland. Irish has managed to fare

[39] See Mairi Robinson, *supra*, at xiii, and J. Derrick McClure, *supra*, at 11-24.
[40] *Irish: Facing the Future* (European Bureau for Lesser Used Languages: Dublin, 1999), at 2.
[41] See, for example, J. C. Beckett, *A Short History of Ireland*, (London: The Crescent Library,

somewhat better in the twentieth century in the Republic of Ireland than in the north, due at first to a vigorous language restoration movement and later to various measures of positive support from the government of the Irish Free State and the Irish Republic, although the number of native speakers of the language has continued to decline.[42] While the language revival movement has continued to play an important role with respect to Irish in Northern Ireland, the language has largely been deprived of the benefits of a supportive State.

According to the 2001 census[43], some 167,490 people, or 9.98% of the Northern Irish population of 1,685,267, reported themselves as having an ability to speak Irish. This is a significant increase over the 1991 census, in which some 142,003 people, also roughly 10% (and as the large majority Roman Catholics, about one-third of that community in Northern Ireland), reported themselves as having an ability to speak Irish.[44] As with the census figures for Welsh and, to a lesser extent, Gaelic, the numbers for Irish in Northern Ireland do not give an accurate picture of actual linguistic competence or use. Unlike Welsh and Gaelic, however, a very small percentage of Irish speakers in Northern Ireland are native speakers, and only a minority of those reported in the census as Irish speakers speak fluently and regularly.[45] Unlike the situation in Wales and Scotland, therefore, the language movement in Northern Ireland is "essentially and unambiguously a revivalist phenomenon".[46] If anything, it has received even less State support than those other Celtic languages, as we shall see, below.

Welsh, Scottish Gaelic, Irish, Cornish, Scots and Ulster Scots are all "regional or minority languages" within in the definition of such

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1979).

[42] *Irish: Facing the Future*, *supra*, at 3.

[43] The census results for Northern Ireland were released on 19 December, 2001.

[44] Aodan Mac Poilin, "The Irish Language Movement in Northern Ireland", in Mairead NicCraith, *Watching One's Tongue*, (Liverpool: Liverpool University Press, 1996), 137, at 152. Surprisingly, given the starkly different State policies towards Irish, the percentage of Irish speakers in the Roman Catholic community in Northern Ireland is broadly similar to the percentage of the population of the Irish Republic who had identified themselves as Irish speakers: see *Irish: Facing the Future*, *supra*, at 8.

[45] A 1987 survey of those claiming to speak Irish in Northern Ireland indicated that only 6% claimed full fluency; 84% claimed to never use Irish at home, 15% used it occasionally, and only 1% claimed to use it on a daily basis: The Eurolang service of the European Bureau for Lesser Used Languages: http://www.eurolang.net/State/uk.htm. While 75,125 people claimed in the 2001 census to be fully fluent in Irish, this is likely an overestimation.

[46] MacPoilin, *supra*, at 151.

languages in Article 1, paragraph a,[47] and all are represented on the UK Committee of the European Bureau of Lesser Used Languages. In its instrument of ratification, the UK declared that, in accordance with Article 2, paragraph 2 of the Charter, that Part III would apply to Welsh, Scottish Gaelic and Irish. The UK also declared that it recognised that Scots and Ulster Scots meet the Charters definition of a regional or minority language for the purposes of Part II. Prior to ratification, the position of Scots and Ulster-Scots under the Charter was ambiguous. Because of their linguistic closeness to English, the language of the UK State, it has been argued that they are mere dialects of English rather than distinct languages. As the Charter does not apply to dialects of the official language, there was a possibility that the Charter would not apply to Scots and Ulster Scots. The Charter provides no means for determining whether a form of expression is a dialect or a separate language, and the explanatory report to the Charter makes clear that there is no clear answer to this issue, and that it is left to State authorities to make this determination.[48] Thus, the declaration by the UK is valuable, as it makes clear that for the purposes of the Charter, Scots and Ulster Scots are separate languages from English. The instrument of ratification made no mention of Cornish. Arguably, the Charter may have applied to Cornish in any case, because Article 2, paragraph 1 does not contemplate that States will designate the languages to which Part II applies; it merely says that States will undertake to apply Part II to all regional or minority languages which meet the definition in Article 1.[49] The UK has resolved this ambiguity, however, by making a subsequent declaration to the Council of Europe that it would also apply Part II in respect of Cornish.

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[47] Article 1, paragraph a provides that "regional or minority languages" are languages that are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and that are different from the official language(s) of that State; the definition makes clear that dialects of the official language(s) cannot be regional or minority languages.

[48] See para. 32, Explanatory Report.

[49] As Cornish is essentially a revivalist phenomena, it is not clear whether it meets the requirement in the definition of "regional or minority languages" that the language be "traditionally used" within the State. Para. 31 of the Explanatory Report indicates that the reference to languages "traditionally used" shows that the Charter is meant to apply to "languages which have been spoken over a long period in the state in question". Clearly, Cornish has been spoken for centuries in the UK, but has not been transmitted intergenerationally within the home since the nineteenth century. It could be argued, though, that even since that time, the language has been spoken, albeit by learners; the Charter does not, strictly speaking, require unbroken intergenerational transmission. This argument is also relevant to Irish in Northern Ireland, because as we have seen, Irish is also primarily a revivalist phenomenon there.

The definition of "regional or minority languages" in the Charter makes clear that "languages of migrants" are not covered by the Charter.[50] Thus, the languages of Britain's large recent immigrant communities would not be covered by the Charter, even though some of these languages have been spoken in the UK over several generations and by a significant number of people. While the 1991 UK census had questions relating to ethnicity, no question was included on language, and so the numbers of speakers of these languages –referred to in the UK as "community languages"– is difficult to determine. The 1991 census revealed that 5.5% of the UK population was comprised of ethnic minorities; however, ethnicity does not necessarily imply linguistic ability. Recent fieldwork in London shows the remarkable linguistic diversity of the capital: in 2000, English was estimated to be the home language of only about two-thirds of 850,000 London school children, and over 300 languages were spoken in households of such children. Based on this research, it is estimated that in London alone, there are about as many as 155,700 Panjabi speakers, 149,600 Gujarati speakers, 136,500 Hindi/Urdu speakers, 136,300 Bengali and Sylheti speakers, 73,900 Turkish speakers, 53,900 Arabic speakers, 47,900 Cantonese speakers, and 47,600 Yoruba speakers.[51] While speakers of such community languages will not benefit from the Charter, they may be relevant to wider UK minority language policy, for a number of reasons: absolute numbers and physical concentrations in urban areas of speakers of many community languages are greater than those of the languages to which the Charter applies, with the exception of Welsh; considerable numbers of speakers of community languages have a limited competence in English, which is generally not true of speakers of the languages to which the Charter applies; and, members of immigrant communities often face other social, economic and other barriers to integration.

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[50] This is further emphasised at para. 15 of the Explanatory Report, which makes clear that the Charter "does not deal with the situation of new, often non-European languages which may have appeared in the signatory states as a result of recent migration flows often arising from economic motives".

[51] Vivian Edwards, "Community languages in the United Kingdom", in Guus Extra and Durk Gorter, eds., *The Other Languages of Europe: Demographic, Sociolinguistic and Educational Perspectives*, (Clevedon: Multilingual Matters, 2001), 243, at 243-247.

2. Existing Measures of Support for Linguistic Minorities in the United Kingdom

The Explanatory Report to the Charter notes that the demographic situation of the regional or minority languages varies greatly, as does the law and practice of the individual States with respect to them, but that they all share "a greater or lesser degree of precariousness".[52] This is true of the languages to which the Charter applies in the UK. As we have seen, all of the UK's regional or minority languages have suffered a steady erosion in the numbers of speakers and have historically been subjected to State policies which have generally ranged from persecution to neglect. More recently, State policies have begun to change. But problems remain. Until Scottish and Welsh devolution in 1999, minority language policy was essentially the preserve of the UK government and Parliament in Westminster.[53] From this metropolitan perspective, the UK's regional or minority languages were never a pressing concern, and developments were largely in reaction to events—and specifically, political pressure—with the result that the law and practice with respect to regional or minority languages in the UK has varied greatly as regards the various autochthonous languages. Thus, some significant advances have occurred in Wales, where political pressure has tended to be most sustained and numbers of speakers have given the language some political clout. The results for the other regional or minority languages have been much more limited, either due to small numbers, lack of political activism, or, as with Irish in Northern Ireland, association with political movements (specifically, various forms of Irish nationalism) which the State has generally tended to refuse to engage with—at least, until relatively recently. UK law and practice, then, have been *ad hoc* and piecemeal, driven by no clear or consistent strategy. In short, there has never really been any clear minority language "policy".

Devolution creates the opportunity to develop a more coherent and sustained minority language policy within the devolved institutions. This has both advantages and disadvantages, though. Without question, devolution will create more scope for discussion of issues which have been

[52] See para. 2, the Explanatory report.
[53] Again, from 1921 until 1972, devolved government existed in Northern Ireland, although this parliament and government, controlled by Unionists was generally hostile to Irish and indifferent to Ulster Scots.

marginal "regional" issues for Westminster. However, progress within the devolved institutions will still depend to a significant degree on political expediency. The situation in Wales is quite positive. In Scotland, the benefits of devolution for both Gaelic and Scots are less obvious, owing to a general attitude of indifference amongst most members of the new Parliament to language issues and, especially amongst members coming from lowland areas, who form the great majority in the Parliament, and to a certain degree of ignorance of Gaelic, in particular. In Northern Ireland, the devolved institutions have proven to be somewhat unstable, and language issues, long implicated in political divide, are prone to be caught up in the ongoing tensions between Unionists and Nationalists. After devolution, the only policy area of major importance with respect to all of the regional or minority languages that is still fully within the effective legislative power of Westminster is broadcasting, with the result that a consistent "national" UK policy—as opposed to "regional" policies within the devolved areas—is even less likely to develop.[54]

Welsh

Of all the UK's autochthonous languages, Welsh has benefited most from supportive State policies. The historical position—early hostility, followed by and alternating with neglect—began to change in the 1940s: the *Welsh Courts Act 1942* repealed the provisions of the 1536 Act, described above, and allowed for some use of Welsh in the courts, and the *Education Act 1944* enabled the establishment of Welsh-medium schools. The *Welsh Language*

[54] Care must be exercised with such a statement, because of the complexities of devolved government in the UK. Generally, the Scottish Parliament and Northern Ireland Assembly can enact primary legislation in all areas other than those which are reserved under the *Scotland Act* 1998 and the *Northern Ireland Act* 1998, respectively to Westminster, and most matters which relate to regional or minority languages, other than broadcasting, which is reserved to Westminster, fall within the legislative competence of these two bodies. In Wales, a more limited form of devolution was created, under which the National Assembly for Wales was essentially transferred most of the administrative powers formerly exercised by the Secretary of State for Wales; thus, it can create secondary legislation, but not primary legislation, and so all legislative powers with respect to the Welsh language (aside from enactments which can be made as secondary legislation under the authority of an Act of the Westminster Parliament) remain with Westminster. It would, for example, take an Act of the Westminster Parliament to change any of the statutes relevant to the Welsh language which are discussed in this paper, and it would not be possible for the National Assembly for Wales to, for example, enact new primary legislation with respect to Welsh. It must be noted, however, that even in respect of Scotland and Northern Ireland, the Westminster Parliament has not given up the power to legislate in those areas which have been devolved; as a practical matter, however, it is unlikely that the Westminster Parliament would do so, for political reasons, at the very least (leaving aside any question of British constitutional law).

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Act 1967 removed remaining barriers to the use of Welsh in the courts, and allowed Ministers to prescribe Welsh versions of official documents[55]. The *Broadcasting Act 1980* and *1981* established Sianel Pedwar Cymru ("S4C"), the Welsh language television channel, which started broadcasting in 1982. Then, three acts of the Westminster Parliament further greatly enhanced the status of the Welsh language in crucial areas of Welsh life: the *Education Reform Act 1988* (education), the *Welsh Language Act 1993* (public life generally), and the *Government of Wales Act 1998* (devolved government in Wales). The present position of Welsh in a variety of domains will now be briefly considered.

Welsh-medium education[56] dates to the late 1940s and early 1950s, but both Welsh-medium education and the teaching of Welsh as a subject was significantly enhanced by the *Education Reform Act 1988*,[57] which provided Welsh with a fundamental place in national curriculum in Wales.[58] The government's goal was to ensure that "all children should by the time they complete their compulsory schooling at sixteen and after eleven years' study of Welsh in school have acquired a substantial degree of fluency in Welsh".[59] Welsh-medium education was already reasonably well-established, and as a practical matter, it is now generally possible for parents to opt for Welsh-medium education at both primary and secondary levels in all parts of Wales. Thus, in 2001-02, there were 442 primary schools in which Welsh was the sole or main medium of instruction with 51,334 children in attendance[60] and 53 secondary schools with 38,817 pupils in attendance in which more than half the foundation subjects are taught wholly or partly in Welsh.[61]

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[55] Although these Welsh versions were to have "equal validity" with the English ones, in cases of doubt, the English versions prevailed.

[56] Education in which Welsh, not English, is the medium of instruction in the classroom; this is to be contrasted with the teaching of Welsh as a subject in an English-medium curriculum.

[57] 1988, c. 40.

[58] See paras. 3(1)(b) and 3(2)(c), and subs. 3(7), *Education Reform Act 1988*, as amended by s. 345B of the *Education Act 1996*. Welsh is now one of four core subjects which all students must study.

[59] Welsh Office, *Welsh for Ages 5-16: Proposals of the Secretary of State for Wales*, (Cardiff, HMSO, 1989), at 4.

[60] This is approximately 27.2 % of all primary schools and 18.2% of all students; there are no primary schools where no Welsh is taught, and virtually all of the remaining students take Welsh as a subject: *Schools in Wales: General Statistics 2002*, (Government Statistical Service, 2002), at 60-66, available at: http://www.wales.gov.uk/keypubstatisticsforwales/content/publication/schools-teach/2002/siwgs2002/siwgs2002.htm.

[61] This is approximately 22.5% of all secondary schools and 14.4% of all students; there are no such schools where no Welsh is taught and only about 1% of secondary pupils are not

Welsh-language broadcasting has also made considerable progress, primarily in the last twenty years. BBC's all-Welsh service, Radio Cymru, currently broadcasts over 120 hours a week in Welsh,[62] and there are also a number of bilingual local radio stations. With regard to television, as noted above, a separate channel, Sianel Pedwar Cymru (S4C), the Welsh Fourth Channel, was established in 1982 to consolidate and expand Welsh-language broadcasting. Both the core funding of S4C and the scheduling of Welsh-language programming on the service are statutorily guaranteed, with the result that S4C now broadcasts about 30 hours per week in Welsh, much of it in prime time.[63]

The legal status of Welsh has been considerably enhanced by the *Welsh Language Act 1993*[64] and the *Government of Wales Act 1998*[65]. In the mid-twentieth century, Welsh had almost no public status in Wales. The 1993 Act, building on the *Welsh Language Act 1967* and other legislation, has changed the situation considerably. It created a Welsh Language Board,[66] one of the responsibilities of which is to assist public bodies in Wales[67] in the preparation of schemes which set out what measures the public body will take as to the use of the Welsh language in connection with the provision of services to the public. In preparing such schemes, the public body is to be guided by the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should, "so far as is both appropriate in the circumstances

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taught Welsh at all: *ibid.* It should be noted that a somewhat smaller number of secondary pupils, 26,967, were taught Welsh as a first language.

[62] See Davies, *The Welsh Language*, *supra*, at 89, and The Welsh Language Board, *Yr Iaith Gymraeg*, http://www.bwrdd-yr-iaith.org.uk. Radio Cymru started broadcasting on 1 January, 1977.

[63] *Yr Iaith Gymraeg*, *ibid.* See, for example, subs. 80(1) of the *Broadcasting Act 1996*, pursuant to which S4C received £80.745 m. in Government funding in 2001 (see the 2001 Annual Report, available at: http://www.s4c.co.uk/e_index.html; an additional £19.895 m. was generated through commercial ventures), and subs. 57(2) of the *Broadcasting Act 1990*, which guarantees that much Welsh-medium programming will be in prime-time slots. S4C has also created two digital television channels, one of which broadcasts about 14 to 15 hours of Welsh language programming per day.

[64] 1993, c. 38.

[65] 1998, c. 38.

[66] S. 1, the *Welsh Language Act 1993*. The Board currently has 11 board members and 31 staff: Welsh Language Board: see *2001-02 Annual Report and Accounts*, available at http://www.bwrdd-yr-iaith.org.uk/html/news/s3_indexpdf-e.html. Its total budget for 2001-02 was £7,364,000.

[67] Defined in subsection 6(1) of the *Welsh Language Act 1993* to include all county councils, district councils or community councils, police authorities, fire authorities, health authorities, NHS trusts, and a broad range of educational bodies.

and reasonably practicable", be treated on a basis of equality.[68] To date, about 200 Welsh language schemes have been approved by the Board, and public bodies which are subject to such schemes include the National Assembly for Wales, central government departments and agencies active in Wales, all 22 county councils, health authorities and police and fire authorities, and a range of bodies in the administration of justice and education sectors. The Board not only guides the preparation of these plans, but also has a supervisory role, and can conduct investigations into non-compliance. The Board is also active in funding a wide range of linguistic activities, and in 2001-02 it made grants of £3,027,739 for promoting the use of Welsh (e.g. book publishing, cultural festivals, community language planning bodies (the "mentrau iaith") and other language initiatives) and a further £2,182,500 to support Welsh-medium and bilingual educational initiatives.[69]

In addition to the creation of the Welsh Language Board, the 1993 Act made a number of other changes which increased the legal status and visibility of the language. The most important of these was to create a right for any party, witness or other person to speak Welsh in any legal proceeding in Wales, with interpreters provided at public expense.[70] The 1993 Act followed the 1967 in providing a discretionary power to Ministers to produce Welsh versions of official forms.[71]

Considerable provision was made for the Welsh language in the new Welsh Assembly, which was brought into being on 1 July, 1999 by the *Government of Wales Act 1998*. This Act provides that the Assembly shall, in the conduct of its business give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that English and Welsh should be treated on a basis of equality[72]; as noted, the Assembly is also subject to

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[68] Subs. 5(1) and (2) of the 1993 Act.
[69] See Annual Report, 2001-02, *supra*.
[70] Ss. 22 and 24, the 1993 Act.
[71] S. 26, the 1993 Act. For a critical view of the 1993 Act, see Davies, *The Welsh Language*, *supra*, at 98; for more optimistic assessments, see Colin H. Williams, "Legislation and Empowerment: A Welsh Drama in Three Acts", in Comhdhail Naisiunta na Gaeilge, *International Conference on Language Legislation*, (Dublin: 1998), and *Yr Iaith Gymraeg*, *supra*.
[71] See, for example, Williams, *ibid*.
[71] See *Yr Iaith Gumraeg*, *supra*.
[72] The *Government of Wales Act 1998*, subs. 47(1).

a Welsh language scheme which reflects this same principle. The Assembly has the power to pass subordinate legislation in both English and Welsh, and where it does so, both versions shall be equally authoritative.[73] Members of the Welsh Assembly may speak in English or Welsh in both the Assembly and in Committees, and simultaneous translation facilities are provided for speeches made in Welsh.[74] Members of the public may use Welsh when communicating with the Assembly[75]; indeed, the Assembly's Welsh language scheme contains significant commitments to Welsh language services.

Section 32, paragraph (c) of the *Government of Wales Act 1998* is perhaps the provision with the greatest significance for the future development of the Welsh language under devolved government. It provides that the National Assembly for Wales "may do anything it considers appropriate to support the Welsh language". Both the Assembly and the Assembly Government have shown a willingness to act. In July, 2002, the Culture Committee and the Education and Lifelong Learning Committee of the Assembly produced a very substantial policy review of the Welsh language entitled *Our Language: Its Future*[76], and among its key recommendations were that the Assembly should provide strategic leadership in developing a bilingual Wales and that the Assembly government should produce a language strategy and monitor its implementation and ensure that promotion of the Welsh-language becomes a theme that cuts across all policy areas. Within a month, the Assembly Government issued a policy statement, *Dyfodol Dwyieithog/Bilingual Future*[77], in which it reiterated that it was "wholly committed to revitalising the Welsh language and creating a bilingual Wales", and that its vision was that:

> "In a truly bilingual Wales both Welsh and English will flourish and will be treated as equal. A bilingual Wales means a country where people can choose to live their lives through the medium of either or both languages; a

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[73] Subs. 122(1), the *Government of Wales Act 1998*.
[74] Standing order 7.1 and 8.18. Indeed, subs. 47(3) of the *Government of Wales Act 1998* requires that the standing orders be in both Welsh and English.
[75] Williams, "Legislation and Empowerment", *supra*, at 146.
[76] Cardiff: The National Assembly for Wales, July, 2002; available at: http://www.wales.gov.uk/keypubassemculture/content/welshlanguagereview/final-report-e.pdf.
[77] Cardiff: Welsh Assembly Government, July, 2002; also available at: http://www.bwrdd-yr-iaith.org.uk/pdf/adolygiadpolisi/datganiadpolisi-e.pdf.

country where the presence of two national languages, and other diverse languages and cultures, is a source of pride and strength to us all.[78]

Finally, in December, 2002, the Assembly Government produced a comprehensive document, *Iaith Pawb*[79]: *a National Action Plan for a Bilingual Wales*[80], in which the government set out in detail the specific initiatives by which it will strengthen the Welsh language. In particular, the government has set a number of targets to be met by 2011, including: increasing the numbers of people able to speak Welsh by 5% over the levels which appear in the 2001 census results; arresting the decline in numbers of communities in which Welsh is spoken by at least 70% of the population; increasing the percentage of children receiving Welsh-medium pre-school instruction; increasing the percentage of families in which Welsh is the medium of communication; and ensuring that more services are delivered through the medium of Welsh by public, private and voluntary organisations.[81] The government also aims to increase the use and visibility of Welsh in all aspects of daily life.[82] The Assembly Government has committed itself to setting up a Welsh Language Unit within the government to implement the action plan and monitor and review its impact.[83] It has also allocated an extra £16 million to the Welsh Language Board over the next three years—in 2003-04, the Board's budget will rise to £11.6 million, an increase of over £4.7 million from 2002-03—to fund a range of initiatives.[84]

While the future of the Welsh language is not secure, demographic trends are now more promising than they have been for perhaps a century, and the legal and administrative framework within which development is now taking place is generally solid. While much remains to be done, the devolved institutions created under the *Government of Wales Act 1998* have shown a considerable commitment to the language, and a willingness to engage in meaningful planning for its future development. It is within this context that the UK's commitments under the Charter will be analysed, in Part III, below.

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[78] *Ibid*, at 3, 4.
[79] "Everyone's language".
[80] Available at: http://www.wales.gov.uk/subiculture/content/action-plan-e.pdf.
[81] *Ibid*, at para. 2.16.
[82] *Ibid*, at para. 2.17.
[83] *Ibid*, at paras. 2.18-2.20.
[84] *Ibid*, at paras. 2.38-2.40.

Scottish Gaelic

Until the mid-1980s, government support for Gaelic was virtually non-existent, and in spite of recent developments, Gaelic still has no official status, is recognised in only a small number of statutes, and receives only about £14 million (including £8.5 million for Gaelic broadcasting) in direct support from the State. In virtually every respect, the contrast with developments in Wales is sharp, and is to the disadvantage of Gaelic.

Perhaps the most important recent development has been the expansion in Gaelic-medium education. Although it had long been possible for students to take Gaelic as a subject, Gaelic-medium education only became available in 1985, when a Gaelic-medium stream, or "unit", was introduced in two schools, one in Glasgow, and one in Inverness. In 2002-03, there were 1,925 primary school pupils receiving Gaelic-medium education at 57 units and one Gaelic-medium school, in Glasgow[85]. At secondary level, there were 375 students receiving some, but not all, of their education through the medium of Gaelic at 19 secondary schools, and there were 997 students studying Gaelic as a subject for fluent speakers and 2,370 studying as a subject for learners.[86]

Unlike in Wales, this recent expansion has no firm statutory basis or clearly articulated policy basis, and depends heavily on the work of interested parents, of Gaelic promotional organisations, and, crucially, on the goodwill of the local councils which have responsibility for delivering education (which can be unpredictable).[87] In Wales, Welsh-medium education is perhaps the key factor in starting to turn the demographic tide; in Scotland, Gaelic-medium education must expand considerably in order to perform the same role, and there

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[85] This school, the first all-Gaelic primary school in Scotland, was opened in August, 1999.
[86] See *Gaelic (Gaidhlig)*, *supra*.
[87] A very general statutory obligation with respect to Gaelic under section 1 of the *Education (Scotland) Act 1980* has been of limited practical value; a scheme of grants, worth £2.8 million for 2001-02, under the *Grants for Gaelic Language Education (Scotland) Regulations 1986* has been of some value in assisting local education authorities with start-up costs of Gaelic-medium education. For an analysis of the limitations of these arrangements in terms of the maintenance of the Gaelic language, see Robert Dunbar, "Gaidhlig in Scotland – Devising an Appropriate Model for a Changing Linguistic Environment", in Comhdhail Naisiunta na Gaeilge, *supra*, at 168-170, and Robert Dunbar, "Minority Language Rights Regimes: An Analytical Framework, Scotland, and Emerging European Norms", in John M. Kirk and Dónall P. Ó Baoill, eds., *Linguistic Politics: Language Policies for Northern Ireland, the Republic of Ireland, and Scotland*, (Belfast: Queen's University, 2001), at 231 *et seq*.

is little evidence that this is close to occurring. A leading demographer, Kenneth MacKinnon has noted that the growth rate in Gaelic-medium education "will be quite insufficient to prevent a further decennial collapse of Gaelic amongst young people" by the time of the 2001 census and that

> "[f]or an education-led language revival, Gaelic-medium schooling would need to be expanded six-fold and become universal in the principal Gaelic areas. In the Western Isles, where roughly 70% of the population is Gaelic-speaking, only 26% of eligible children are enrolled in Gaelic-medium schooling.[88]"

With respect to broadcasting, there has also been an expansion in Gaelic-medium services over the last fifteen years. In 2002-03, BBC Radio nan Gaidheal broadcast about 63 hours per week of Gaelic-medium radio programming, and there were about 250 hours of original Gaelic-medium television programming offered over BBC Two and the private sector Grampian Television, Scottish Television and Channel 4.[89] Much of this programming is funded by a Gaelic Broadcasting Committee ("the "CCG"), set up under the *Broadcasting Act 1990*[90], which currently has an annual budget of £8.5 million. Once again, Gaelic suffers in comparison with Welsh. The CCG can only fund the production of Gaelic-medium programming, but it has very little control over how, when and even if such output is aired; that power lies with the broadcasters such as the BBC and the independent Scottish Television. The funding of the CCG is not guaranteed by statute, but is now at the discretion of the Scottish Executive, the devolved government set up under the *Scotland Act 1998*; the budget has declined in real terms over several years, and had actually cut by £500,000 in 1998-1999, although

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[88] MacKinnon, "Neighbours in Persistence", *supra*. Similar conclusions have been reached by the Ministerial Advisory Group on Gaelic, appointed by the Minister in the Scottish Executive with responsibility for Gaelic: *A Fresh Start for Gaelic/Cothrom Ùr don Ghàidhlig*, (Edinburgh, May, 2002), at para. 1.11 of the "National Plan for Gaelic". The Ministerial Advisory Group estimated that, in order to arrest the decline of Gaelic, intake into Gaelic-medium education would have to be about 2% of all primary students; at present, such intake is only about 0.35%.

[89] The numbers of broadcast hours are taken from *A Review of Aspects of Gaelic Broadcasting*, prepared for the Scottish Office Education and Industry Department, Arts and Cultural Heritage Division, by Fraser Production & Consultancy, May, 1998, at pp. 3-9, and Appendix 1.

[90] 1990, c. 42.

£450,000 of that has recently been restored, albeit on a one-off basis for the 2002-03 financial year.[91]

In the cultural sphere, the Scottish Executive provides several hundred thousand pounds of direct assistance to a number of cultural and language promotional bodies. There is, however, relatively little use made of Gaelic in the private and voluntary sectors, and even in the area of Gaelic cultural development, a surprising number of activities concerning the Gaelic musical and visual arts take place through the medium of English.

With respect to its position in public life –the government and administration and the judicial system– Gaelic is once again in a much weaker position than Welsh. There is no equivalent of the *Welsh Language Act 1993*, although CNAG has been campaigning for a similar piece of legislation which would create similar structures for the Gaelic language and similar rights for its speakers,[92] and in 2002 Michael Russell of the SNP has introduced a member's bill before the Scottish Parliament that seeks to implement at least some of these proposals. Called the *Gaelic Language (Scotland) Bill*, it would require a broad range of public bodies working in designated parts of Scotland—in the first instance, in an area which corresponds with the historical "heartland" of the language in the Highlands and Islands—to produce plans to give effect, in the provision of services to the public and in their internal processes—to give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the Gaelic and English languages should be treated on the basis of equality.[93] Given that the Scottish Executive has said that it will not support the bill, it is unlikely that it will become law.

With respect to the courts, legal proceedings are generally conducted exclusively through the medium of English, and Gaelic speakers have no right to use their language in court unless they can demonstrate an insufficient

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[91] For an analysis of the present system of support for Gaelic broadcasting, see Dunbar, *supra*, at 164-168.
[92] See Comunn na Gaidhlig, *Inbhe Thèarainte dhan Ghàidhlig/Secure Status for Gaelic*, (December, 1997), and *Inbhe Thèarainte dhan Ghàidhlig: Draft Brief for a Gaelic Language Act*, (June, 1999); see Dunbar, *supra*, at 172-175, for a discussion of the 1997 proposals.
[93] Para. 1(3), 6 and 7, *Gaelic Language (Scotland) Bill*; the Bill can be found at: http://www.scottish.parliament.uk/parl_bus/legis.html#69.

command of English.[94] There is some limited scope for dealing with the Scottish Land Court through the medium of Gaelic in respect of crofting matters, but such arrangements are not based on any statutory right. Gaelic has gained some recognition in the new Scottish Parliament and Scottish Executive, created by the *Scotland Act 1998*,[95] although it is not yet clear whether this recognition is real or symbolic. Nonetheless, Gaelic may, with the permission of the Presiding Officer (i.e. the Speaker), be used in parliamentary debates and before committees.[96] The signage for the Parliament is fully bilingual. The Scottish Executive policy has been less clear. It has appointed a minister with responsibility for Gaelic, it follows the practice of replying in Gaelic to letters received in Gaelic, issues bilingual press releases where the subject matter has particular relevance to Gaelic, and has continued the Scottish Office practice of producing Gaelic versions of important national documents. However, the response of the Scottish Executive to the need for more significant legislative and administrative action to protect and promote Gaelic has been characterised largely by prevarication. In December, 2000, the Junior Minister with responsibility for Gaelic, Alasdair Morrison, established a Task Force to examine the arrangement and structures for the support of Gaelic organisations in Scotland, and to advise Scottish Ministers on future arrangements. In September, 2000, this task force produced a report entitled *Revitalising Gaelic—A National Asset/Ag Ath-Bheothachadh Gàidhlig: Neamhnuid Nàiseanta*[97], which concluded that Gaelic was in a precarious, even critical state, and that without significant government support, it would not survive beyond the midpoint of the 21st century. It recommended the creation of a Gaelic department within the Executive and a Gaelic Development Agency which would produce an overarching strategy

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[94] *Taylor v. Haughney*, 1982 S.C.C.R. 360; as there are no unilingual Gaelic-speakers, this means that Gaelic will not be heard in Scottish courts. As both the Scottish Land Court and the Crofters' Commission are statutorily required to have one member who speaks Gaelic, this may imply a right to use Gaelic before both of these tribunals: see A.C. Evans, "The Use of Gaelic in Court Proceedings", *1982 Scots Law Times*, 286-7, at 286.

[95] 1998, c. 48.

[96] Statutory Instrument 1999 No. 1095, *The Scotland Act 1998 (Transitory and Transitional Provisions)(Standing Orders and Parliamentary Publications) Order 1999*, art. 3, Schedule, Rule 7.1.1, 7.1.2, and 7.8.1. The likelihood that much Gaelic will be used is, however, small. Gaelic is not permitted in many important types of parliamentary business, such as motions, petitions and questions, and it will not be used in legislation.

[97] (Edinburgh: 2000); this document is available at: http://www.scotland.gov.uk/library3/heritage/gtfr-00.asp. For a critical evaluation of the report, see Alasdair MacCaluim and Wilson McLeod, "Revitalising Gaelic?: A Critical Analysis of the Report of the Task Force on Public Funding for Gaelic" (Edinburgh: Department of Celtic and Scottish Studies, 2001), available at: http://www.arts.ed.ac.uk/celtic/poileasaidh/IPCAMacpherson2.htm.

and formulate and implement clearly articulated plans for the language. The response of the Junior Minister was to establish another body, the Ministerial Advisory Group on Gaelic ("MAGOG"), in December, 2001, to "take forward" the Task Force's recommendations. MAGOG worked quickly, and produced its report, *A Fresh Start for Gaelic/Cothrom Ùr don Ghàidhlig*[98], in May, 2002. It echoed the earlier recommendation for the creation of a unit within the Scottish Executive to deal with Gaelic matters and a Gaelic Development Agency, or Gaelic Language Board, to oversee development. Crucially, it also recommended that a Gaelic Language Act should be created, based on CNAG's proposals; indeed, this was its first recommendation[99]. The Scottish Executive has committed itself to only one of these recommendations—a development agency, or language board—and in the summer of 2002, it announced the creation of Bòrd Gàidhlig na h-Alba (the "Gaelic Board of Scotland"). A chairman of the Board was appointed in October, 2002, and five other board members were appointed in January, 2003; none have any obvious qualifications or expertise in language planning and development, although one member has considerable expertise in Gaelic-medium educational matters. The Board will not have any statutory basis, and has no clearly defined powers or, as yet, any fixed budget. Again, the contrast with the Welsh Language Board is stark.

To conclude, while there has been some increase in government support for Gaelic, particularly Gaelic-medium education and broadcasting, developments in other areas, particularly in respect of public services, are much more limited. Gaelic development has generally not been based on any coherent language policy; rather, developments have tended to be reactive and ad hoc, and on occasion merely tokenistic. Crucially, Gaelic development has an insufficient statutory basis and institutional basis, with the result that Gaelic organisations and activists face considerable uncertainty, and must often fight the same battles on a recurrent basis.

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[98] (Edinburgh: May, 2002); available at: http://www.magog.org.uk/.

[99] While the recommendation did not make explicit reference to CNAG's proposals, it said that there should be an act, which would provide "secure status" to Gaelic. The term "secure status" has no particular meaning in law; it is simply the form of words used by CNAG to describe their proposals for a language act. References to "secure status" should, therefore, be understood to mean the concept which was created and promulgated by CNAG.

Irish

Due to its association with Irish nationalism, Irish was treated with hostility by the government of Northern Ireland in the period from 1921 until the dissolution of the Stormont Parliament in 1972, the first period of devolved government in Northern Ireland. The only area in which State support for the language was provided was education; Irish was generally available as a subject in the largely independent grant-maintained schools run by Roman Catholic religious orders.[100] Irish-medium primary schools were opened in West Belfast in the 1970s, but initially received no government support whatsoever. Irish-language broadcasting was banned until 1982, and no funding was made available for Irish-language arts initiatives until the late 1980s.

It was only in the 1980s, when Northern Ireland was under direct rule from Westminster, that government policy began to change. In 1983, State funding for Irish-medium education began; in 2001-02, and in 2002, over 2,000 children are in Irish-medium education at primary and secondary level. In particular, there are 24 primary schools offering Irish-medium education, nineteen of which are freestanding Irish-medium schools, and there is one freestanding Irish-medium secondary school, Meánscoil Feirste in Belfast, and two other secondary level schools with Irish-medium units, in Armagh and Derry; there are 2,177 pupils in Irish-medium education at both levels.[101] Irish continues to be taught as a subject at both the primary and post-primary maintained Roman Catholic schools and a number of the newer inter-denominational schools. With respect to the media, BBC Northern Ireland broadcasts about 2.5 hours per week of radio programming in Irish, which includes some repeat programming, but in 2001-02 broadcast only 16 hours of television programming, 13 hours of which was repeat programming for adult learners of Irish.[102] With respect to cultural life, the Northern Ireland Arts Council offers grants for various Irish-language events. Finally, the ULTACH Trust/Iontaobhas ULTACH, with a Board of Directors of both

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[100] *Irish: Facing the future*, *supra*, n.96, at 15-16. See, generally, Liam Andrews, "The very dogs in Belfast will bark in Irish: The Unionist Government and the Irish Language 1921-43", in Aodan Mac Poilin, ed., *The Irish Language in Northern Ireland*, (Belfast, 1997) at 49-94.
[101] Submission by Pobal to the Committee of Experts on the Charter, *The European Charter for Regional or Minority Languages: The Implementation of the Charter with regard to the Irish language July 2001-July 2002*, (Belfast: Pobal, 2002), at 3.
[102] *Ibid*, at 39.

Roman Catholics and Protestants, was founded in 1989 with government funding with the purpose of promoting the Irish language throughout the entire community in Northern Ireland.[103]

The position of Irish, and indeed, Ulster Scots in Northern Ireland has been altered somewhat by the Belfast Agreement, reached on Good Friday, 1998[104], between the Irish and UK governments. Language issues were dealt with in a separate section of the Belfast Agreement, and both paragraph 3 and 4 of this section draw heavily on the wording of the Charter, in particular the Part II commitments in Article 7. Paragraph 3, for example, refers to the recognition by all parties to the agreement of "the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland the Irish language, Ulster-Scots and the languages of various ethnic communities", language which draws heavily on Article 7, paragraph 3 of the Charter. Paragraph 4 of the Belfast Agreement makes particular reference to Irish, and commits the UK government to "take resolute action to promote the language", to "facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand", and to "seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language"; these commitments echo Article 7, paragraphs 1 c, d, and 2 of the Charter. The provision in paragraph 4 of the Belfast Agreement relating to consultation is "an enlightened interpretation of Article 7.4 of the Charter".[105] Paragraph 4 of the Belfast Agreement contains further commitments with respect to Irish in Northern Ireland which are certainly in keeping with the spirit of Part II of the Charter, such as the placing of a statutory duty on the Department of Education to encourage and facilitate Irish-medium education, the encouragement of financial support for Irish language film and television production in Northern Ireland, and a commitment to exploring the possibility of expanding the

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[103] *Irish: Facing the Future*, *supra*, at 15-16, 23, 26, 33-34.

[104] For a much more complete discussion of this subject, see Aodan Mac Poilin, Director of the ULTACH Trust, "The Belfast Agreement and the Irish Language in Northern Ireland" (February, 1999) (unpublished), and "Language, Identity and Politics in Northern Ireland", (January, 2000) (unpublished). See also "The Charter and the Belfast Agreement: Implications for Irish in Northern Ireland", and "Ulster Scots—The European Charter/Belfast Agreement", *Contact Bulletin* (The European Bureau for Lesser-Used Languages), Vol. 15, No. 1, Nov. 1998, at 3, 2.

[105] "The Charter and the Belfast Agreement", *ibid.*

availability of the Irish State-sponsored Irish-medium broadcast service, Teilifis na Gaeilge, now TG4, in Northern Ireland.

Steps have been taken to implement these commitments. In particular, a North/South Language Body came into effect on 2 December, 1999, which has responsibilities with respect to Irish and Ulster Scots. In particular, its functions including the promotion of the Irish language, facilitating and encouraging its use in speech and writing in public and private in the Republic of Ireland and, in the context of Part III of the Charter, in Northern Ireland where there is appropriate demand.[106] Two agencies were set up by the North/South body, one, Foras na Gaeilge, with responsibility for the promotion of the Irish language on an all-island basis, and the other, Tha Boord O Ulstèr-Scotch, with responsibility for the promotion of greater awareness in the use of Ullans and of Ulster-Scots cultural issues, both within Northern Ireland and throughout the island.[107] Foras na Gaeilge has a 16 member board of directors, all of whom will, with the board of Tha Boord O Ulstèr-Scotch, sit on the North/South Language Body, and it has subsumed the functions of Bord na Gaeilge, the official Irish development agency in the Republic of Ireland. Its initial budget of 17.5 million Euros (about £12.5 million) will be spent on Irish language initiatives throughout the island or Ireland. With regard to education, the Department of Education for Northern Ireland is under a statutory duty "to encourage and facilitate the development of Irish-medium education" and the department "may, subject to such conditions as it thinks fit, pay grants to any body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education".[108] A development council for the Irish-medium sector, Comhairle na Gaelscolaíochta, was established on 20 June, 2000, and it will act as an advisory body. Together with the Department of Education for Northern Ireland, it has established Iontaobhas na Gaelscolaíochta (the Irish Medium Trust Fund), which is meant to support the development of the Irish-medium sector by awarding grants to independent Irish-medium schools and helping with the capital costs of Irish-medium schools which have received grant aid for recurrent costs but not for capital costs.

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[106] *The North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999*, S.I. 1999, No. 859, paras. 17-19.

[107] See the website of the North/South Language Body for additional information: http://www.northsouthministerialcouncil.org/language.htm.

In summary, the legal and institutional position of Irish in Northern Ireland is weak, even compared to Scottish Gaelic, although there have been some notable advances within the education sector. The instability of devolution in Northern Ireland, and with it, of devolved institutions such as the North/South Language Body, is a potential barrier to significant new developments.

Scots, Ulster-Scots and Cornish

Scots, Ulster Scots and Cornish labour under a common problem: they all receive little State recognition and even less State support. For example, Scots and Ulster Scots are neither the medium of instruction nor a separate subject in schools in either Scotland or Northern Ireland, although many students in Scotland in particular are exposed to Scots as part of their instruction in Scottish literature, and new materials such as dictionaries have been produced for use in schools. Some organisations in Scotland also receive a limited amount of discretionary public funding: the Scottish National Dictionary Association, which produces Scots dictionaries and conducts linguistic research, and the Scots Language Resource Centre, which develops educational materials, publishes in Scots, and acts as a pressure group.[109]

In Northern Ireland, existing levels of support are generally as rudimentary, but the immediate future may be somewhat more promising. As noted above, the Belfast Agreement included obligations with respect to language: Article 7, paragraph 3, made reference to the recognition by all parties to the agreement of "the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland the Irish language, Ulster-Scots and the languages of various ethnic communities". Also as noted, an autonomous agency, Tha Boord O Ulstèr-Scotch (the Ulster Scots Agency) was established under the North/South Language Body; it has an eight person board, and is responsible for the promotion of greater awareness and use of Ulster Scots language and its attendant culture, both within Northern Ireland and throughout the island. In November, 2000, it launched a 3-year, £4.1 million development programme, and it has established, with the University of Ulster, a School of Ulster

[108] *Education (Northern Ireland) Order 1998*, article 89(1) and (2), S.I. 1998, No. 1759.
[109] *Scots: A linguistic double helix*, *supra*, at 39-43.

Scots Studies, is funding an Ulster Scots/English dictionary, and a major tape-recorded survey of native Ulster Scots speakers. Given that Scots is likely spoken by significantly larger numbers than Ulster Scots, and that it originated in Scotland, it is somewhat ironic that Ulster Scots is arguably now in a better institutional position that Scots. This is almost solely due to the political dynamics of Northern Ireland, where Ulster Unionism has championed Ulster Scots as a counterweight to Nationalist support for Irish. This illustrates perfectly the unprincipled and essentially reactive nature of minority language policy in the UK.

With respect to Cornish, while the revival movement there has been somewhat successful in spreading an awareness of the Cornish language, it has received very little State support in doing so. The language forms no part of the school curriculum in Cornwall –most language learning takes place in evening classes– and there has been no support for the training of Cornish language development teachers. However, Cornish has received some recognition from the European Bureau for Lesser Used Languages, a European Community institution and the Cornwall County Council has adopted a policy on the Cornish language which has been accepted by four of the six district councils in the county.[110]

3. Application of the Charter to British Regional or Minority Languages

While the signature and subsequent ratification of the Charter by the UK were generally greeted warmly by organisations and individuals active in the development of the UK's autochthonous languages, the immediate impact of the Charter has not been very great. This is largely due to the approach taken by the UK to its obligations under Part III, which could be described as a minimalist one, and its attitude to individuals and non-governmental organisations active in and to varying degrees representative of the minority language communities, which appears to be one of indifference.

[110] *The Cornish*, *supra*, at para. 5.4.

In particular, the decisions to sign and ratify the Charter, and the crucial decisions with respect to the UK's commitments under Part III, were generally presented to the various regional or minority language communities as a *fait accompli*. The author is aware of no process of consultation or negotiation with any of the affected communities as to what the UK's obligations under the Charter would be. In Scotland, for example, the leading Gaelic development agency at the time, CNAG, was simply informed at a meeting with Ministers of the Part III obligations that would be undertaken in respect of Gaelic and of the very small changes in domestic practice that would be implemented in order to satisfy such obligations.[111] In Northern Ireland, the approach appears to have been much the same:

> "It appears to the Irish language community that the selection of the provisions of Part III of the Charter for the Irish language took place without adequate consultation. While the Department of Culture, Arts and Leisure circulated an outline of proposals regarding the Charter to Irish language groups prior to the signing of the Charter, the level of consultation was very limited. This reflects the general failure of the authorities to adopt a partnership approach to the ratification and subsequent implementation of the Charter.[112]"

The UK authorities seem to have taken much the same approach in the preparation of its initial periodical report to the Council of Europe, which was submitted on 1 July, 2002.[113] In particular, the UK report indicates that only the Welsh Language Board and "all Northern Ireland Departments and a range of associated bodies" were consulted in the preparation of the report.[114] In fact, this assertion is factually wrong; the Scottish Executive had also consulted CNAG, although it did not include any of CNAG's observations in the final report itself. As the Welsh Language Board is a government-appointed body, it appears

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[111] The author is a director of CNAG, and had first hand experience of these events.
[112] Pobal, *The Implementation of the Charter with regard to the Irish language July 2001-July 2002*, *supra*, at 9.
[113] States parties to the Charter are required to submit the first periodical report within one year of the date of entry into force of the Charter: Article 15, para. 1. The Charter entered into force for the UK on 1 July, 2001. The UK's initial periodical report can be found at: http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/Regional_or_Minority_languages/Documentation/.
[114] UK Initial Periodical Report, *ibid*, at Part I, question 6.

that consultation was largely limited to governmental and quasi-governmental bodies, and did not include individuals or voluntary or other organisations which represent the regional or minority language communities themselves.

With respect to the choice of its obligations in respect of Welsh, Gaelic and Irish under Part III, the approach taken by the UK government has been exceptionally narrow. Rather than viewing the ratification of the Charter as an opportunity to review its policy with respect to regional or minority languages and as a springboard for significant improvements, the UK Government has simply accepted those paragraphs and sub-paragraphs of Part III where, it feels, satisfactory provision already exists. Neither the UK Government nor the devolved governments or parliaments appear to have taken any significant new measures in response to ratification. When, for example, the UK government first announced its intention to sign the Charter in June, 1998, it believed that the existing range of measures in place to support Welsh meant that the requirements of the Charter were already more than being met in Wales. Thus, the Welsh Assembly Secretary for Education and Training reported in 2000, prior to UK ratification of the Charter, that "*[o]n the basis of current policies and programmes*, it is believed that the UK can apply with confidence 52 paragraphs and subparagraphs from Part III . . . to Welsh", and that these have been agreed to by the government[115] (emphasis added). Indeed, the UK subsequently designated these 52 paragraphs and subparagraphs, without the introduction of any additional measures. In 1999, John Walter Jones, Chief Executive of the Welsh Language Board, put the position bluntly:

> "Given the relative strength of the Welsh language in Wales today, and given the various forms of support for the language that exist, I could say with little fear of contradiction that the Welsh language will survive whether the United Kingdom ratifies the charter or not. The fact is that the future of Welsh is not dependent on the existence of the charter and its provisions, or on its ratification by the United Kingdom Government.[116]"

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[115] Based on a private communication to the author in April, 2000 of a Paper from the then-Welsh Assembly Secretary for Education and Training; para. 12.
[116] *Implementation of the European Charter for Regional or Minority Languages*, (Strasbourg: Council of Europe, 1999), Regional or Minority Languages, No. 2, at 52.

More recently, in written testimony to a Committee of the Scottish Parliament in January, 2003, the Welsh Language Board noted the following:

> "Although the measures relevant to Welsh [under Part III] are, in the main, already in place in Wales, we regard the decision to ratify as a firm commitment to safeguarding and maintaining indigenous languages as an essential part of our cultural heritage."[117]

While the various Part III commitments in respect of Welsh will be considered briefly, below, it could be argued that, given the commitment of the National Assembly of Wales and the National Assembly Government to making Wales a bilingual country, an even larger number of commitments could have been made, and that the strongest commitments in each particular area covered in Part III should have been chosen.

The same basic approach was taken with respect to Gaelic. The UK ultimately designated 39 paragraphs and sub-paragraphs under Part III in respect of Gaelic, four above the minimum of 35 required under the Charter. In the spring of 2000, the Scottish Executive had indicated that it could apply 38 paragraphs, 37 of which on the basis of existing provision.[118] Because Gaelic then had almost no presence in the Scottish Court system, the UK Government felt unable to sign up to any of the provisions in Article 9 of the Charter, "Judicial authorities".[119] The Scottish Executive solved this problem making a very minor change to the court rules so as to allow the use of Gaelic by witnesses in criminal proceedings in three sherriffdoms in northwestern Scotland which serve only a minority of the Gaelic speaking population. With respect to Irish in Northern Ireland, the UK has designated 36 paragraphs and sub-paragraphs, one greater than the minimum, but once again it does not appear that the authorities made any change in order to do so.

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[117] Submission of the Welsh Language Board to the Education, Culture and Sport Committee of the Scottish Parliament, in respect of the *Gaelic Language (Scotland) Bill*, Papers for the meeting of 14 January, 2003, at p. 4, para. 4; see: http://www.scottish.parliament.uk/official_report/cttee/educ-03/edp03-02.pdf.

[118] Private communication to the author in March and April, 2000, including an outline of the UK's proposed commitments in respect of Gaelic from the Arts & Cultural Heritage Division of the Scottish Executive, as it then was known.

[119] It must specify at least one paragraph or subparagraph in Art. 9.

Finally, it should be noted that in the initial periodical report, States parties to the Charter are required to state the main legal act(s) whereby the Charter has been implemented, and are also given the opportunity to mention the general considerations which have guided them in the ratification process. Significantly, the UK report only makes reference to legal acts which pre-date the ratification of the Charter, thereby implying that no additional legal measures were taken in response to ratification. As significantly, the UK did not take the opportunity to comment on the general considerations which guided the UK's ratification process.[120]

As to the paragraphs and sub-paragraphs actually designated, the UK generally opted for the strongest obligations in respect of Welsh, and the weakest obligations with respect to Irish in Northern Ireland, with Gaelic in Scotland falling somewhere in between. Given existing measures of support, this is precisely what one would expect. Given the generally more precarious demographic and social position of Gaelic and Irish, a much more rigorous set of commitments in respect of those languages may have been justified, particularly in light of the obligation under Article 7, paragraph 1(c) of the Charter that States are to base their policies, legislation and practice on the need for resolute action to promote regional or minority languages in order to safeguard them.

With regard to the UK's obligations under Article 7, these are owed to all regional or minority languages, and therefore apply not only in respect of Welsh, Gaelic and Irish, but also in respect of Scots, Ulster Scots and Cornish. As already noted, there is very little State support for any of these languages, and furthermore there appears that no clear policy has ever been articulated, either at Westminster or within the devolved institutions of government, with respect to their development. It is therefore difficult to see how the UK's obligations under Article 7 are presently being met with respect to Scots, Ulster Scots and Cornish. At the same time, mere ratification of the Charter by the UK and the UK's recognition in its instrument of ratification that Part II (Article 7) applies in respect of these languages is an important breakthrough. First, it means that the UK is recognising Scots and Ulster Scots as languages, rather than

[120] UK Initial Periodical Report, *supra*, Part I, question 1.

dialects, and that Cornish is a living language which merits positive measures of support. Second, while the obligations under Article 7 are general, they suggest a clear policy orientation in respect of these languages; given that the UK nor the devolved institutions have not, as just noted, ever developed a coherent policy for these languages, the Charter may be a useful spur to action. In this, the work of the Committee of Experts will be crucial. Their report and recommendations could have very important implications for the development of both policy and tangible measures of support. (It should be noted here that the Committee of Experts conducted an "on the spot" visit to the UK in late January, 2003, and that their report and recommendations should be made within about a year).

One further observation that should be made in respect of Article 7 relates to paragraph 4 thereof, which obliges States parties to take into consideration the needs and wishes expressed by the groups which use such languages. In this context, it is significant to recall that neither the UK government nor the devolved governments appear to have consulted community-based organisations at all in respect of the UK's ratification, or, for that matter, in respect of the preparation of the UK's initial periodical report to the Council of Europe. There does not appear to be any formal ongoing process for taking the advice of community groups, and in Scotland, sustained calls by a range of Gaelic organisations for a language act have essentially been ignored by both the Westminster and devolved government.[121] Article 7 also encourages States parties to establish bodies for the purpose of advising the authorities on all matters pertaining to regional or minority languages. The UK has arguably satisfied this requirement in respect of Welsh, Gaelic, Irish and Ulster Scots: the Welsh Language Board certainly performs this function; the Scottish Executive has established a language board to advise on Gaelic; and the North/South Language Body, together with its two agencies, Foras na Gaeilge and Tha Boord O Ulstèr-Scotch, perform this role in respect of Irish and Ulster Scots. However, the Welsh Language Board has statutorily defined powers and duties; the North/South Language Body has more amorphous powers and duties, and the Gaelic language board still has no clearly defined role, and no statutory basis. Furthermore, the

[121] For example, Comunn na Gàidhlig, Scotland's leading Gaelic development agency, has never received a formal response from either the Westminster Government nor the Scottish Executive to the two reports it has submitted on a Gaelic Language Act—the first in December, 1997, and the second in June, 1999.

members of these various bodies are not selected by the communities themselves, but by the relevant government, and there is no role for the communities in the selection process. The expertise with respect to minority language development is uneven, although once again, the Welsh Language Board clearly leads the way. Scots and Cornish have no similar bodies, and it is not clear how, or whether, the authorities take any advice on these languages at all.

With regard to the specific Part III commitments, as noted, the UK government designated 52 paragraphs and subparagraphs in respect of Welsh. It designated the "strongest" provisions[122] in respect of pre-school, primary and secondary education. Given the strong position of Welsh-medium education in the Welsh educational system, this is appropriate.[123] With respect to technical and vocational education and higher education, the UK has designated weaker provisions[124]; this reflects the relatively weaker position of Welsh in these sectors.[125]

Given the relatively strong position of Welsh in the legal system as a result of measures such as the *Welsh Language Act 1993*, relatively strong provisions are also designated under Article 9.[126] It should be noted, however, that the UK did not designate the "strongest" of the provisions in respect of civil and criminal courts—that courts will conduct proceedings through the medium of Welsh—nor did the UK designate paragraph 2 a or paragraph 3. In a fully bilingual Wales—which is the stated objective of government policy—the measures described in these various provisions would be available, and therefore one would have expected a stronger commitment under the Charter. Furthermore, it is not clear, as a practical matter, how much court business is conducted through the medium of Welsh, or what steps are taken to ensure that litigants avail themselves of their rights under the *Welsh Language Act 1993*.

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[122] Paragraphs 1 a (i), b (i) and c (i).
[123] Nine paragraphs or subparagraphs were designated under Article 8.
[124] Paragraph 1 d (iv) and e (iii).
[125] The UK Initial Periodical Report indicates that only about 2.5% of technical or vocational education is bilingual or Welsh-medium, and only about 1.5% of higher education is through the medium of Welsh.
[126] Eight paragraphs or subparagraphs were designated under Article 9.

The UK has undertaken the most, and the most onerous, commitments under Article 10[127], and this is appropriate, given the stated policy goal of a bilingual Wales. The UK is basing its compliance here on the provisions of the *Welsh Language Act 1993* and, in respect of the position of Welsh in the regional assembly, the provisions of the *Government of Wales Act 1998*, both of which were discussed earlier. Without question, both Acts, and in particular, the language schemes drawn up under the 1993 Act, have done a great deal to promote effective bilingualism in the public sector in Wales. The key issues here will be compliance with existing obligations, and this is a matter which the Welsh Language Board itself is addressing.

With respect to the commitments under Article 11, relating to media, the UK has once again generally designated the "strongest" options,[128] and this is appropriate, given the existing measures of support, described above, for Welsh medium television and radio. The UK has also taken on every possible commitment under Article 12, which is once again appropriate, given stated policy goals.[129] In both cases, the major issues will relate to actual implementation, and these issues will presumably be explored by the Committee of Experts. With respect to economic and social life, the range of commitments is somewhat less comprehensive[130], although this is not surprising, given that Wales has generally not sought to regulate the use of language in the private or voluntary sectors. The Welsh Language Board has, however, sought to encourage greater use of Welsh in these sectors, and it should have been possible, for example, for the UK to have designated paragraph 1 d, under which States undertake to facilitate and/or encourage the use of regional or minority languages in economic and social life by means other than those set out in subparagraphs 1 a, b, and c. It should be noted that this undertaking is made in respect of "the whole country", which would mean throughout the UK; however, this applies with respect to all of the paragraph 1 commitments, and it is not clear why, for example, the Welsh Language Board could not encourage private or voluntary sector actors elsewhere in the UK to

[127] Fourteen paragraphs or subparagraphs were designated under Article 10, and in every case, the UK has designated the "strongest" measure.
[128] Six paragraphs or subparagraphs were designated under Article 11.
[129] Ten paragraphs or subparagraphs were designated under Article 12.
[130] Five paragraphs or subparagraphs were designated under Article 13.

provide Welsh-medium services where such services are being provided to Welsh-speakers, either in Wales or elsewhere in the UK. Finally, the UK has made no commitment under Article 14, "Transfrontier exchanges", and this, too, is disappointing, given that a range of contacts have been developed and support provided to Welsh speakers and learners in the Chubut province of Argentina, which is recognised in the UK Initial Periodical Report itself, albeit in respect of the UK's obligations under Article 7, paragraph 1 i., which also refers to the promotion of transnational exchanges.

With respect to Gaelic, both the range and depth of the UK's Part III commitments are not as great as with respect to Welsh. As we have seen, Gaelic language development has focused primarily on the education system and on media, particularly television. Not surprisingly, then, the widest range of obligations have been undertaken under Articles 8 and 11.[131] Interestingly, in its instrument of ratification, the UK designated subparagraphs 1 a (i), b (i), and c (i), the "strongest" measures in respect of pre-school, primary and secondary education. These commitments anticipate that Gaelic-medium education is available as a matter of course, part of the "mainstream" educational provision in Scotland. Based on the discussion of the actual provision, above, this is patently not the case; the situation more closely resembles what is anticipated under subparagraphs 1 a (iii), b (iv) and c (iv), and it is perhaps significant that in the UK Initial State Report, reference is made to these latter three subparagraphs, rather than the three subparagraphs which the UK actually designated. With regard to media, the UK has designated "weaker" provisions—for example, subparagraph 1 a (iii), "to make adequate provision so that [public service] broadcasters offer programmes in Scottish Gaelic", or subparagraphs 1 b (ii) and c (ii), to "encourage and/or facilitate" the broadcasting or radio and television programmes in Gaelic on a regular basis. While these commitments arguably do reflect present provision—at least as regards the BBC Gaelic radio service—they fall well short of the Gaelic community's aspirations, and the recommendations of two reports commissioned by the UK Government on Gaelic broadcasting, both of which have recommended the creation of a stand-alone Gaelic broadcasting authority with the power to commission and broadcast programming.

[131] Ten paragraphs or subparagraphs were designated under Article 8, and eight under Article 11. The UK also designated eight under both Article 10 and 12, however.

With regard to the other Articles, the UK has either opted for the most minimal provisions imaginable—the minor changes to the court rules which were made in order to allow the UK to designate even one provision under Article 9 were discussed above—or commitments which any serious scrutiny will show are being inadequately met. In particular, the UK has designated ten paragraphs or subparagraphs under Article 10, but the actual use of Gaelic made by public bodies, even the local council for the Western Isles, the one local council district in which Gaelic speakers are in the majority, is negligible. So, while, as noted above, the UK has generally taken a minimalist approach to the designation of obligations under Part III, the process of scrutiny of these commitments by the Committee of Experts will allow non-governmental organisations an opportunity to highlight shortcomings, and will subject authorities in Scotland to such scrutiny for the first time. This will be of considerable value.

Finally, many of the same considerations apply with respect to Irish in Northern Ireland. As noted above, the UK has designated fewer paragraphs and subparagraphs in respect of Irish—36, one more than the minimum—and the obligations undertaken tend to be weaker than in respect of Gaelic. Generally, this reflects the present circumstances, in which, outside of the field of education, Gaelic has generally enjoyed somewhat more positive State support. The treatment by the UK of Article 8 in respect of Irish is strange.[132] In many ways, the situation with respect to Irish is similar to that in respect of Gaelic in Scotland, in terms of numbers of students in Irish-medium; in some respects, Irish is in an even more favourable situation, in that much Irish medium education takes place in Irish-medium schools, rather than classes in English-speaking schools, as is the norm in Scotland, and in that the education regulations have concrete rules with respect to numbers of students needed to establish classes and schools. In spite of this, the subparagraphs designated by the UK government in respect of pre-school, primary and secondary education, 1 a (iii), b (iv) and c (iv), impose more limited requirements than those designated for Scottish Gaelic. The UK should arguably have designated the stronger provisions designated for both Gaelic and Welsh.

[132] Nine paragraphs or subparagraphs were designated under Article 8.

As already discussed, provision for Irish medium services outside of the educational sector is very weak, and the UK has generally designated the least onerous obligations possible, which is yet again an illustration of the minimalist approach that has generally been taken. However, it will be difficult for the UK authorities to demonstrate, based on current provision, that even these most minimal of obligations have been satisfied. With respect to Article 9, for example, the UK designated the minimum number of paragraphs or subparagraphs required, one, which is paragraph 3, under which the UK undertakes to make available in Irish the most important national statutory texts and those relating particularly to users of Irish. In its Initial Periodical Report, the UK mentions only three such texts—the *Northern Ireland Act 1998* and two pieces of secondary legislation relating to the Irish language. While the Northern Ireland Department of Culture, Arts and Leisure have apparently begun work on translating other texts, it is not clear how far this work has progressed or, indeed, on the policy which is guiding the selection of appropriate texts.[133] With regard to Article 10,[134] the main issues will be ones of compliance; although both some governmental departments and some local authorities permit the submission of oral or written applications in Irish and draft documents in Irish (the bulk of the commitments under Article 10 in respect of Irish relate to such matters), practice is inconsistent, some bodies do not apparently understand that they have any obligations at all, and development is guided by no clear policy.[135] Again, the commitments themselves tend to the minimalist; the ability to send correspondence in Irish, but to receive a reply in English, may technically meet the basic requirements of some of the Article 10 provisions undertaken, but is indicative of a policy of bare "tolerance" of Irish, rather than one of promotion, as required under Article 7. With regard to broadcasting,[136] it is doubtful whether even the minimal requirements undertaken by the UK can be satisfied by the very limited amount of Irish medium radio and television broadcasting, described above. Finally, with regard to cultural activities and facilities,[137] considerable emphasis was placed on the Arts Council of Northern Ireland and several local libraries in the UK Initial Periodical Report, but it appears that Irish language groups have been critical of the lack of support for or clear

[133] Pobal, *The Implementation of the Charter with regard to the Irish language July 2001-July 2002*, *supra*, at 30-31.
[134] Nine paragraphs or subparagraphs were designated under Article 10.
[135] Pobal, *supra*, at 32-33.
[136] Seven paragraphs or subparagraphs were designated under Article 11.
[137] Seven paragraphs or subparagraphs were designated under Article 13.

policy on Irish language initiatives, and Irish medium provision in the library system seems to be based more on fortuitous circumstances—the fact that some local library employees speak Irish—than on any clear policy with respect to Irish medium provision, of which none appears to exist.[138]

4. Conclusions

UK policy and practice with regard to its regional or minority languages has historically been marked by either hostility or indifference, or measures of both. Sustained activism in Wales, together with relatively large numbers of speakers, has resulted in significant changes, particularly over the last twenty years, with the result that the long decline of the language may be coming to an end. Certainly, Welsh now enjoys a significant institutional base in Wales, and devolved government promises to consolidate these gains. The situation with respect to the other regional or minority languages is not as promising; each suffers from a lack of institutional support and an absence of a clear policy for development. Indeed, minority language policy and practice in the UK has generally been uncoordinated, unprincipled and largely reactive.

In this context, the ratification by the UK of the Charter represents a limited but potentially significant step forward. It is a limited step in the sense that the UK has taken a minimalist approach to the Charter, generally designating under Part III only those provisions which the UK and the devolved institutions can already satisfy based on existing provision. Ratification has not resulted in any significant new initiatives for any of the regional or minority languages; given the already relatively strong position of Welsh, this is perhaps not a problem, but given the weakness of the other languages, this is a serious lost opportunity.

The UK ratification of the Charter can, nevertheless, be considered to be a potentially significant step forward for a number of reasons. First, the UK's decision to recognise Scots, Ulster Scots and Cornish under Part II means that it accepts Scots and Ulster Scots as languages, rather than dialects,

[138] Pobal, *supra*, at 42-43; Pobal argues that its analysis of the most recent figures on Northern Irish Arts Council funding show that awards to Irish language arts groups accounted for approximately 0.027% of total awards for 2002/03: at 43.

that it views Cornish as a living language, and in the case of all three of these languages, it confirms that the UK has positive obligations. Given that neither the UK Government nor any of the devolved governments provides any real support to or has any policy for any of these languages, the ratification of the Charter should act as a spur to development. Second, the UK has designated Irish in Northern Ireland for the purposes of Part III, and this is an important breakthrough, because at the time that signature and ratification was first being considered, there was an expectation that Irish would not be designated, because the UK Government did not feel that the minimum number of paragraphs and subparagraphs could be identified.[139] Third, in spite of the minimalist approach taken by the UK to its Part III obligations, the Charter still articulates relatively clear general principles in Part II and sets down in both Parts II and III some criteria by which State policy and practice can be measured. Indeed, given that only the Welsh Assembly Government has articulated a relatively clear policy for its minority language, the general principles in Part II may force an articulation of such a policy in respect of the other languages.

This brings us to perhaps the most significant consequence of UK ratification of the Charter; the one which may flow from the State reporting system created under the Charter for the purpose of monitoring State compliance. While State reporting systems in human rights instruments are often thought to be an inadequate substitute for litigation-based models, the Charter's mechanism holds out some promise to the UK's regional or minority language communities. It has provided the opportunity to non-governmental organisations to make representations in respect of State policy and practice; as noted earlier, such organisations have generally not been given a significant role in the creation or implementation of State policy and practice, especially as regards the Charter. Second, governmental institutions—central, regional and local—are being closely scrutinised for the first time and are being forced to explain and account for their policies and practices. Such outside scrutiny from an important international organisation will hopefully shake the indifference of governments at all levels, and in some cases force them to treat minority language policy as a serious and legitimate aspect of public policy generally. Indeed, the process of scrutiny

[139] See Robert Dunbar, "Implications of the European Charter for Regional or Minority Languages for British Linguistic Minorities", (2000) 25 *E.L.Rev. Human Rights Survey* 46, for a discussion of the vexing question of the designation of Irish under Part III.

could be of value even in Wales, where concern has shifted from institutional development to implementation issues. It is for these reasons that the "on the spot" visit of the Committee of Experts was welcomed and that their final report and recommendations are eagerly anticipated by the regional or minority language communities. Thus, the relatively small step of UK ratification may create a very useful dynamic for these communities.

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* Disponible en català, "La diversitat lingüística europea. Per a qui? Els casos de Finlàndia i Suècia", a El dret a la diversitat lingüística (2002), Col·lecció CIEMEN-Drets lingüístics, Ed. Mediterrània, Barcelona

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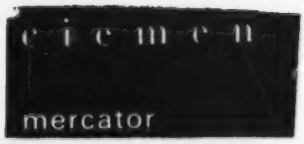

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